IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO.7852 OF 2005.

DGP Windsor (India) Ltd. ... Petitioner.
V/s.
Pradeep S. Thakurdas & ors. ... Respondents.

Shri P.N.Anaokar for the petitioner.
Shri S.K. More for the respondents.

CORAM : V.C.DAGA, J.
DATED : 12.4.2006.

P.C. :

. The petitioner has moved precipe dated 5.4.2006 reading as under:

> . " The petitioner respectfully submits that in the petition and also in the synopsis of arguments filed by the petitioner, the petitioner amongst others has raised serval contentions, some of them have been dealt with by this Hon'ble Court.
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> . The contentions specifically not dealt with by this Hon'ble Court in the judgment and order dated 31st March, 2006 are as follows:-
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> . 1. The petitioner submits that Item 3 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is attracted, if malafides are alleged and proved. Further that, there was no evidence led by the Respondents to show that the action of the petitioner in issuing Transfer Orders was malafide.
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> . 2. That even if no enquiry was conducted, it does not straight away result in reinstatement but the employer is required to be given an opportunity to lead evidence to prove the charges."

. Heard learned Counsel appearing for the review petitioner.

. So far as contentions sought to be raised in the precipe referred to hereinabove are concerned, the same are devoid of any substance.

. In the order dated 31.3.2006 it is categorically held in paras 21 to 28 that the impugned orders of termination were not within the sweep of Item 1 of Schedule IV of the MRTU & PULP Act. In otherwords, those orders were not punitive. Since the termination orders were not punitive, there was no question of proving any misconduct against the employees by leading evidence.

. It was also held in para 22 of the order that orders of transfer were issued by the employer bonafide with a view to provide alternate job to the employees at Watva and Chhatral but the said offers were not accepted by the employees, which, ultimately, resulted in termination of their services.

. As a matter of fact, petitioner itself wanted to bring orders of termination in the zone of punishment; so as to contend that the complaint was tenable before the Industrial Court and that complaint ought to have been filed before the Labour Court. This contention did not find favour with this Court; as such, there was no occasion to permit the petitioner to lead evidence to prove any misconduct against the employees.

. So far as invocation of Item 3, 9 & 10 of Schedule IV are concerned, the same is dealt with in the order in para 46. It was held that looking to the pleadings in the complaint, the same was very much maintainable. Applicability and proof of one item out of three was sufficient to sustain the impugned order. At any rate, it was held in the order that the action of the employer was in breach of Item 9 of Schedule IV of the Act.

. So far as other items are concerned, this Court concurred with the findings recorded by the Court below as such it was not necessary to repeat the same. Favourable finding on any other item would not have changed the outcome of the final judgment and order; as such precipe moved by the petitioner has no substance. The prayeer made therein is liable to be rejected.

. At this stage, learned Counsel for the petitioner prayed for extension of stay. However, since there is no stay to the order in question, the question of extension thereof does not arise.

. Request made in the preciepe, thus, stands rejected with no order as to costs.

(V.C.DAGA,J.)